

Senate Study Bill 1094

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON KREIMAN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to expert witness, notice of claim, and
2 certificate of merit requirements in medical malpractice
3 actions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1905XC 82
6 rh/je/5

PAG LIN

1 1 Section 1. Section 147.139, Code 2007, is amended to read
1 2 as follows:
1 3 147.139 EXPERT WITNESS STANDARDS.
1 4 If the standard of care given by a physician ~~and or~~ surgeon
1 5 licensed pursuant to chapter 148, or osteopathic physician ~~and~~
1 6 ~~or~~ surgeon licensed pursuant to chapter 150A, or a dentist
1 7 licensed pursuant to chapter 153, is at issue, the court shall
1 8 only allow a person to qualify as an expert witness and to
1 9 testify on the issue of the appropriate standard of care ~~if~~
~~1 10 the person's medical or dental qualifications relate directly~~
~~1 11 to the medical problem or problems at issue and the type of~~
~~1 12 treatment administered in the case, breach of the standard of~~
~~1 13 care, or proximate cause if all of the following~~
~~1 14 qualifications are established:~~
1 15 1. The expert is licensed to practice medicine,
1 16 osteopathic medicine, or dentistry and in the three years
1 17 preceding the allegedly negligent act, engaged in the active
1 18 practice of medicine, osteopathic medicine, or dentistry, or
1 19 was a qualified instructor at an accredited university of
1 20 medicine and surgery, osteopathic medicine and surgery, or
1 21 dentistry.
1 22 2. The expert practices in the same or substantially
1 23 similar specialty as the defendant.
1 24 3. If the defendant is board certified in a specialty, the
1 25 expert is also certified in that specialty by a board
1 26 recognized by the American board of medical specialties and is
1 27 licensed and in good standing in each state of licensure, and
1 28 has not had the expert's license revoked or suspended in the
1 29 past five years.
1 30 Sec. 2. NEW SECTION. 147.140 NOTICE OF CLAIM AND
1 31 CERTIFICATE OF MERIT REQUIREMENT.
1 32 1. At least thirty days prior to filing a civil action for
1 33 personal injury or wrongful death against a licensed health
1 34 care provider, based upon the alleged negligence of the
1 35 licensed health care provider in the practice of that
2 1 profession, a plaintiff shall serve by certified mail, return
2 2 receipt requested, a notice of claim upon the licensed health
2 3 care provider. The notice of claim shall include a statement
2 4 of the theory of liability upon which the cause of action is
2 5 based and include a list of all persons to whom notices have
2 6 been sent, together with a certificate of merit, if necessary,
2 7 as specified in subsection 2.
2 8 2. a. The certificate of merit shall be signed under oath
2 9 by an expert who, in the three years preceding the allegedly
2 10 negligent act, either practiced or instructed in the same or
2 11 substantially similar field of medicine as the defendant.
2 12 b. The certificate of merit shall contain information
2 13 relating to all of the following:
2 14 (1) The expert's familiarity with the applicable standard
2 15 of care.
2 16 (2) The expert's qualifications.
2 17 (3) The expert's statement that the appropriate standard

2 18 of care was breached by the health care provider named in the
2 19 complaint.

2 20 (4) The expert's statement of the actions that the health
2 21 care provider should have taken or failed to take to have
2 22 complied with the standard of care.

2 23 (5) A statement of the manner in which the breach of the
2 24 standard of care was the cause of the injury alleged in the
2 25 complaint.

2 26 c. A separate certificate of merit shall be completed for
2 27 each defendant named in the notice of claim.

2 28 d. If a plaintiff or plaintiff's counsel asserts in good
2 29 faith that the plaintiff has insufficient time to obtain a
2 30 certificate of merit prior to the expiration of the period of
2 31 limitation in subsection 1, the plaintiff shall provide notice
2 32 of intent to provide a certificate of merit to the defendant
2 33 within sixty days of the date the defendant receives the
2 34 notice of the claim.

2 35 3. Notwithstanding subsection 2, if a plaintiff believes
3 1 that a certificate of merit is not necessary because the
3 2 plaintiff's cause of action against a health care provider is
3 3 based upon a well-established legal theory of liability which
3 4 does not require expert testimony supporting a breach of the
3 5 applicable standard of care, the plaintiff shall file a
3 6 statement setting forth the basis for the alleged liability of
3 7 the health care provider in lieu of the certificate of merit.

3 8 4. Except as otherwise provided in this section, the
3 9 applicable statute of limitations in a civil cause of action
3 10 against a health care provider upon whom a notice of claim is
3 11 served pursuant to this section shall be tolled from the date
3 12 the notice of claim is mailed.

3 13 5. If the plaintiff fails to provide a notice of claim and
3 14 a certificate of merit, or a statement of the legal theory
3 15 upon which the claim is based, the claim shall be dismissed
3 16 with prejudice.

3 17 6. For purposes of this section, "health care provider"
3 18 means a physician or surgeon, osteopath, osteopathic physician
3 19 or surgeon, dentist, podiatric physician, optometrist,
3 20 pharmacist, chiropractor, or nurse licensed in this state, a
3 21 hospital licensed pursuant to chapter 135B, or a health care
3 22 facility licensed pursuant to chapter 135C.

3 23 EXPLANATION

3 24 This bill relates to expert witness, notice of claim, and
3 25 certificate of merit requirements in an action for medical
3 26 malpractice.

3 27 The bill provides that if the standard of care given by a
3 28 physician or surgeon licensed pursuant to Code chapter 148, an
3 29 osteopathic physician or surgeon licensed pursuant to Code
3 30 chapter 150A, or a dentist licensed pursuant to Code chapter
3 31 153, is at issue in a medical malpractice case, the court
3 32 shall only allow a health care provider who is licensed in
3 33 this state to qualify as an expert witness and to testify on
3 34 the issue of the appropriate standard of care, breach of that
3 35 standard, or proximate cause if the health care provider meets
4 1 certain professional practice and educational criteria.
4 2 Current law relating to expert witness standards in a medical
4 3 malpractice action allows a person to testify as an expert
4 4 witness and to testify on the appropriate standard of care if
4 5 the person's medical or dental qualifications relate directly
4 6 to the medical problem at issue and the type of treatment
4 7 involved.

4 8 The bill provides that at least 30 days prior to filing a
4 9 civil action for personal injury or wrongful death against a
4 10 health care provider, based upon the alleged negligence of the
4 11 licensed health care provider in the practice of that
4 12 profession, a plaintiff shall serve by certified mail, return
4 13 receipt requested, a notice of claim upon the licensed health
4 14 care provider. The notice of claim shall include a statement
4 15 of the theory of liability upon which the cause of action is
4 16 based and include a list of all persons to whom notices have
4 17 been sent, together with a certificate of merit.

4 18 The bill requires that the certificate of merit shall meet
4 19 certain requirements and specifies certain information that a
4 20 qualified expert who provides information in the certificate
4 21 of merit shall provide. The bill provides that a separate
4 22 certificate of merit shall be completed for each defendant
4 23 named in the complaint, and that if a plaintiff or plaintiff's
4 24 counsel asserts in good faith that the plaintiff has
4 25 insufficient time to obtain a certificate of merit prior to
4 26 the expiration of the 30-day limitation period, the plaintiff
4 27 shall provide notice of intent to provide a certificate of
4 28 merit to the defendant within 60 days of the date the

4 29 defendant receives the notice of the claim. If a plaintiff
4 30 believes that a certificate of merit is not necessary because
4 31 the plaintiff's cause of action against a health care provider
4 32 is based upon a well-established legal theory of liability
4 33 which does not require expert testimony supporting a breach of
4 34 the applicable standard of care, the plaintiff shall file a
4 35 statement setting forth the basis for the alleged liability of
5 1 the health care provider in lieu of the certificate of merit.

5 2 The bill further provides that the applicable statute of
5 3 limitations in a civil cause of action against a health care
5 4 provider upon whom a notice of claim is served shall be tolled
5 5 from the date the notice of claim is mailed. In addition, if
5 6 the plaintiff fails to provide a notice of claim and a
5 7 certificate of merit, or a statement of the legal theory upon
5 8 which the claim is based, the claim shall be dismissed with
5 9 prejudice.

5 10 For purposes of the bill, "health care provider" means a
5 11 physician or surgeon, osteopath, osteopathic physician or
5 12 surgeon, dentist, podiatric physician, optometrist,
5 13 pharmacist, chiropractor, or nurse licensed in Iowa, a
5 14 hospital licensed pursuant to Code chapter 135B, or a health
5 15 care facility licensed pursuant to Code chapter 135C.

5 16 LSB 1905XC 82

5 17 rh:nh/je/5